IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 156 OF 2006.

Ismailsaheb Imamsaheb Patil & others. ... Appellants.
Versus.
Dhareppa Somanna Chambhar & others. ... Respondents.

Shri Sandesh D.Patil for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 13th MARCH, 2006.

P.C.:

1. Heard Shri Patil for the Appellants. The Appellants are the original Plaintiffs. The suit was filed by the Appellants for declaration that the order of regrant made in favour of the Respondent No.1/ Defendant No.1 is illegal and void and the Appellants are entitled to the regrant of the same.

2. The case of the Appellants is that the original Plaintiff was the Inamdar in respect of the suit land. The name of Respondent No.1/Defendant No.1 was entered in the Revenue records as tenant prior to 1957, but the same was deleted in the year 1959. The relevant inam or vatan was abolished under the Abolition Act of 1962 and in the year 1963 the land was resumed the State Government. The contention of the Appellants is that the original Plaintiff was entitled to regrant of the said land and the Respondent No.1 behind the back of the original Plaintiff paid occupancy price in the year 1970 and obtained regrant in his favour. The contention of

the Appellants is that the order of regrant is void as the Respondent No.1 was not concerned in any manner with the suit land. The contention is that from 1959 onwards the original Plaintiff was in possession till his dispossession at the hands of the Respondent No.1 in the year 1977.

3. The trial Court decreed the suit by holding that the order of regrant in favour of Respondent No.1 was null and void. In an appeal preferred by the original Defendants, the First Appellate Court interfered and has set aside the decree. The Appellate Court held that the Appellants have failed to prove that the regrant ordered to be made by the Reveue authorities was illegal and void. The Appellate Court also held that the State Government was a necessary party to the suit and the suit was bad for non-joinder of necessary party.

4. Shri Patil on behalf of the Appellants submitted that the order of regrant was made in favour of the Respondent No.1 on the basis of the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 and in fact the athorities under the said Act of 1948 had no jurisdiction to entertain the proceedings. He submitted that the Respondent No.1 did not offer occupancy price within the stipulated period of one year from the date of abolition of vatan and therefore, there could not have been any order of regrant in his favour. He

submitted that the State Government was not at all a necessary party and at the highest it was a proper party.

5. I have considered the submissions. It is not in dispute that the Appellants did not claim regrant of the suit land in their favour at any time from 1963 till the date of filing of the suit in the trial Court i.e. 2nd January 1986. In the suit, the case of the Appellants is that they were dispossessed by Respondent No.1 in the year 1977 on the basis of the order of regrant. It is an admitted position that within the time stipulated by law, which is admittedly one year, the Appellants did not offer to pay the occupancy price and never applied for regrant. In view of this psoition, it is obvious that under the statute the Appellants are not entitled to an order of regrant. Hence they cannot claim any right, title or interest in respect of the suit land.

6. In any event, remedy of preferring a statutory appeal against the order of re-grant in favour of the Respondent No.1 was admittedly available to the Appellants. On the basis of the assertions made in the plaint, it is impossible to come to the conclusion that the order of regrant in favour of the Respondent No.1 was without jurisdiction and null and void. As stated earlier, the Appellants are not entitled to regrant under the relevant statute.

7. Though there is a substance in the submission of the Advocate for the Appellants that the State Government was not a necessary party, the Appeal cannot be entertained. On merits the Appellants must fail. No substantial question of law arises in the Appeal and the Appeal is dismissed with no order as to costs.

Judge.